App.F.IX-4

1925-6.

File No. G.F. 40-25

(G. F.)

Serial Nos. 28 & 45

Previous References
G.H. 620-17-1 & 2.
Gf 17-23-54 & 57
Gf 7-24-15 & 28
Gf 7-24-17 & 20(a)
Gf 7-24-23 & 30
Later references
Gf 2 in 1102/26-27
Gf 7-26-82, 95, 96

Reserve

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 2.

Part B for Jan.y 26.

SUBJECT

Forwards letter No. S.L. 25/419 of 18.8.25 from the Manager Bank of Mysore regarding the transfer of S.L. bonds of Rs 10,000/- standing in the name of one Mr Dada Bhai Navroji Sinai deceased and requests whether the succession Certificate granted by the Chief Judge of Bhavanagar may be accepted and the transfer effected.

Secs. 45. To. The Comptroller to Govt.

No. FL 4066 dated 28th Jan.y 1926

P14 E

States that it is not permissible according to law to act upon it. The party may be requested to produce a Certificate granted by a Competent Court in Mysore

AP 27/1

Serial No

From the Comptroller
No 1480 S.L. dated 28.11.25

28 Forwards letter No S.L.25/419 d: 18/25 from the manager Bank of Mysore regarding the transfer of S.L. bonds of Rs 10000/- standing in the name of one late Dhadabhai Navroji since deceased and requesting in the circumstances explained whether the Succession certificate granted by the Chief Judge of Bhavnagar may be accepted and the transfer effected.

2 (1) G.O. No 96 1926-Rev: 7 7-24-80 d: 30.9.26. referred to in the P W D is put up that G.O authorises the acceptance of Succession certificates etc granted by outside courts only in respect of holdings not exceeding Rs 5000/- the cases contemplated there appears to be no provision in the new Securities Regulations for cases exceeding Rs 5000/- it will be safe to insist on the certificate being taken in a Mysore Court of Law -

2) The opinion of Sir L.A. Seeld may perhaps be obtained in the matter

Subject to orders 2/12/25 (3) Please put up the previous case in which it has been decided that Succession cert- should be taken out in Mysore Courts of Law

By 4/12

Note—Contn. Sheet

Serial No

4) Kind reference is invited to paras 3, 6 & 7 of the rules in G.O. file 7-24. (17+30a) and to para 4 of G.O. collection (7-24 Nos. 15 & 28) flagged C.

2) These two Cases, Succession Certificates in a Mysore Court of Law were insisted. The orders were based on the legal opinion obtained in each case. vide also the opinion of the L.D. Secretary contained at flag Y. (G.O. 7-27-25 (SR+S.R.)).

Subd. by under 4/12/25

5 The succession cert will have to be taken out in a Mysore Court of Law. The party need not have taken out the same in a foreign Court.

B. 5/12

125 Kind Secy) to forward with compts to the Secy Law Dept for favour of advice.

Mys. 6-12-25

7 My opinion to be placed below.

B.A. 9-1

For Secy with Compts

8 The opinion of the L.D. Secy may be communicated by introducing an amendment to the L.D. Secy suggests to Succession Cert Regn as per Section 17 of the Br. Act. the necessary action in this behalf has to be taken by the Law Deptt Kind Secy) B. 7/1

694

Note—Contn. Sheet

General and Revenue Secretariat | S. F. File No. 40 of 1925.

Serial No

9 The draft reply to the Comptroller is according to legal opinion and it may be approved.

10 I do not think it is possible to adopt the course suggested by the Local & Legislative Secretary on the analogy of the provision contained in Section 17 of the British Indian Succession Act. This Section provides for the acceptance in British India of certificates granted to residents within a Foreign State by the British Representative accredited to that State. The Government of India, therefore, can act only upon certificates which are given by their own agency. We can have no such agency either in British India or in Indian States. The only reciprocity that is possible is for the Mysore Government to accept succession certificates granted by the British Indian Courts and for the Government of India to accept the certificates granted by the Mysore Courts. Under present conditions, such reciprocity is not possible and no action in the direction of amending our Succession Act, as suggested by the Local & Legislative Secretary, can, therefore, be taken.

DEWAN.)

11 Mysore 16-1-26

DEWAN'S OFFICE. Rec'd 16. JAN. 1926 Reg. No. 5320.

To comply Done 21-1-26

No. 96 4006-5.23.1.26

with reference to 8 & 20 States that it is not permissible to act on the certificates granted by Bhavanagar Judge and that a certificate in Mysore should be

Issued 23.1.26

Note—Contn. Sheet

O P I N I O N.

My opinion has been asked ~~for~~ on the question whether the Succession Certificates granted by Courts outside Mysore may be acted upon ~~where~~ in cases of Mysore Government Securities ~~are concerned~~ and whether these certificates -- entitle the holders thereof to give valid acquittances so as to afford immunity to persons paying debts to them.

The fundamental principle of law is that a debtor is not bound to pay the amount to one who cannot give a valid discharge for it and that he is entitled to demand that the representative of the deceased creditor shows sufficient authority to give a valid acquitance therefor. He may also, if he chooses pay to any person whom he considers as xx the representative of the deceased creditor, but then in a suit by a rival claimant or by xx a certificate holder he will be bound to show that the person to whom he paid the debt was the real heir-at-law to the deceased.

The Succession Certificate Regulation has been designed xx specially to protect parties paying debts to the representatives of deceased persons holding certificates granted under the enactment. The relevant portions of the Regulation are referred to below. The Regulation extends to the whole of Mysore. (Section I) The District Court within the jurisdiction of which the deceased resided or the assets of the deceased are found may grant a certificate. (Section 5). A certificate under the Regulation shall have effect throughout Mysore (Section 15) and the certificate of the District Court shall,

with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities and shall afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities, to or with the person to whom the certificate was granted (Section 16). The expression(District Court) has been defined in Section 3 to mean only a District Court in Mysore.

As the indemnity arises out of the act of the legislature in Mysore, the provisions contained in the Local enactment and the procedure indicated therein should be followed if the privilege of protection afforded by Section 16 is to be availed of by the debtor. It is only a certificate granted by the Mysore Courts under the Mysore Regulation that can so afford protection.

Further, under Section 4 (1) (d) (ii) of the Regulation the Civil Courts will not also recognize the representative character of the individual unless a certificate granted under this Regulation by the Local Courts is produced.

An examination of the corresponding Act of British India shows that there are similar provisions therein to those of the Mysore enactment so that under Sections 1 and 5 of that Act the certificates granted by the British Indian Courts can be operative only in British India. Besides under Section 8 of the Act the certificate should specify debts and securities set forth in the application for

for the certificate. "Security" as contemplated in the Act has been defined in Section 3 to mean any promissory Note, debenture, stock, or other security of the Government of India or any other security which the Governor General in Council may by Notification in the Gazette of India declare to be a security for the purposes of this Act. As the Mysore Government Securities are not included within the definition of the term "Security" used in the Succession Certificate Act of British India no application for a certificate can include the Mysore securities and the Courts in British India would also be barred from issuing a certificate in respect of such securities. The certificate, if any, embracing the Mysore Securities would be one granted without jurisdiction and consequently invalid in law unless it is viewed as a debt.

"In regard to the title of executors and administrators" says Story "Conflict of Laws, 8th edition Section 512) "derived from a grant of administration in the country of domicile of the deceased, it is to be considered that that title cannot, de jure extend, as a matter of right, beyond the territory of the Government which grants it. It has hence become a general doctrine of the common law that no suit can be brought or maintained by an executor or administrator in his official capacity in the Courts of any other Country except that from which he derives his authority to act, in virtue of the probate and letters testamentary or the letters of administration there granted to him. If he desires to maintain a suit in any foreign country, he must obtain new letters of administration and give new security according to the rules of

law prescribed in that Country before the suit is brought"

The Following is this well known principle of law, the Madras High Court have held that forentitling a person under Section 4 of the Succession Certificate Act to sue in British India in respect of the assets of a deceased the probate or certificate obtained in the Court of a Native State cannot be recognized (See Madx 17 Madras p.14)

For the foregoing reasons I am of the opinion that the Succession Certificates in respect of Mysore Securities should be those issued by the Mysore Courts and that payment in accordance with such certificates alone can afford protection to debtors under Section 16 of the Regulation.

Incidentally I find that there is a provision in Section 17 of the British Indian Act which runs as follows:-

"Where a certificate in the form, as nearly as circumstances admit, of the second schedule has been granted to a resident within a Foreign State by the British representative accredited to the State, or where a certificate so granted has been extended in such form by such representative, the certificate shall, when stamped in accordance with the provisions of the Court-fees Act, 1870, with respect to certificates under this Act, have the same effect in British India as a certificate granted or extended under this Act."

Effect of certificate granted or extended by British representative in Foreign State.

According to this provision parties in a foreign State may first establish their representative right in the courts of the State

and then apply to the British Agent to issue a certificate in his name. Such certificate when stamped in accordance with the provisions of the British Indian Court Fees Act has the same effect as a certificate granted by the British Indian Courts. By a similar provision in our Regulation, legislative sanction may be obtained for recognising the certificates of outside courts on their being stamped here in accordance with the provisions of the Court FeesRegulation.

It is a fundamental principle of law that when a Statute imposes conditions to be fulfilled before a certain action is taken, those conditions are to be strictly complied with before any immunity can be claimed for the action taken; & that the Statutes framed by the Legislature of one country can bind only those who owe allegiance to the Sovereign enacting such laws & have no operation beyond the Sovereign's territorial jurisdn.

Tested in the light of these principles, the certificate granted by a Court in another State, has no operation in this one & can afford no immunity from any payment made by the holder of such certificate. The Govt will not be justified in relying upon the certificate now produced.

9. Jan 1919.

22356

OFFICE OF THE COMPTROLLER TO THE GOVERNMENT
OF HIS HIGHNESS THE MAHARAJA OF MYSORE,

1480/SL
No. ~~838~~/SL. 9/2.+1.
1925

Bangalore, dated 28th November 1925

DIARY NO. 2054
1925 — 26
BANGALORE. G.F.
File No. 40-25
Serial No. 28-11-K

From

T. SATYARAJ CHETTY, Esq., B.A.,
Comptroller to the Government of
His Highness the Maharaja of Mysore,
BANGALORE.

GENL. & REV. SECTT. Br. To 30 NOV. 1925 G.D. SECTION.

To

Rajakaryaprasaktha Dewan Bahadur
M.N. Krishna Rao, Esq., B.A.,
Financial Secretary to the
Government of Mysore, Bangalore.

Sir,

I have the honour to state that the Manager, the Bank of Mysore Ltd., Bangalore, had forwarded with his letter No. SL. 25/419 dated 18th August 1925 (Copy enclosed) two 7% State Loan Bonds of the aggregate value of Rs. 10,000/- standing in the name of one Mr. Dadabhai Navroji Bhavanagarwala (since deceased) along with a succession certificate granted by the Chief Judge of Bhavanagar in favour of Messrs./Dadabhoy Hormajsha and Rustomji for effecting the transfer of the bonds in favour of the succession certificate holders.

As G.O.No. Fl. 1926/G.F. 7-24-30 dated 30th September 1924 contemplated the acceptance of succession certificates, probates, etc., granted by Courts outside Mysore only in respect of the holdings of State Loan Bonds the face value of which does not exceed Rs. 5,000/- on the parties executing an indemnity bond, this office informed the Bank in No. 456/SL dated 20th August 1925 (copy enclosed) that the parties may be asked to obtain a succession certificate in a Mysore Court of Law, and they were accordingly advised by the Bank. They however in their letter 3rd November 1925 to the Bank (enclosed herewith for reference and return) have expressed their difficulty and the hardship entailed in obtaining a certificate from a Mysore Court and request that the requirement of this office may be waived. I therefore solicit orders of Government in the matter of accepting the certificate granted by a Court having jurisdiction outside the State. The succession certificate has not been sent by the parties but if it is required for reference by Government, it

Letter No.456/SL dated 20th August 1925 from the Comptroller to the Manager, Bank of Mysore, Ltd., Bangalore.

With reference to your letter No.SL.25/419 dated 18th August 1925, regarding the transfer of the two 7% state loan bonds for Rs.10,000/- standing in the name of late Dadabhai Navroji Bhavanagarwala in favour of Messrs. Darasha, Hormajsha, and Rustumji on the strength of the succession certificate granted by the Chief Judge of Bhavanagar, I write to inform you that the parties may be kindly advised to obtain a certificate of succession in a Mysore Court of Law as the Face Value of the bonds in question exceeds Rs.5000/-. The two 7% bonds for Rs.10,000/- and the succession certificate received with your letter are herewith returned, the receipt of which may be kindly acknowledged.

"Copy"

Superintendent, Records Section,

Comptroller's Office.

213

Letter No.SL.25/419 dated 18th August 1925 from the Manager Bank of Mysore Ltd, to the Comptroller, Bangalore.

Re. Estate of Dadabhai Navroji Bhavanagarwala.

--

We enclose herein 7% Mysore State Loan bonds of the face value of Rs.10,000/- standing in the name of the above deceased, together with the Gujarathi Succession certificate granted to Messrs. Barasha, Hormajsha, and Rustamji by the Chief Judge's Court of Bhavnagar, and also a certified English Translation of the same, and shall thank you to transfer the bonds in favour of the legal heirs of the deceased.

Please acknowledge receipt, and return the bonds early together with the enclosures.

"Copy"

Superintendent, Records Scetion,

Comptroller's Office.

243

29899

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

In reply please refer to No. SL.1940.

GENL. & REV. SECTT. Br. 7 13 JAN 1926 G. D. SECTION.

Comptroller's Office, Bangalore,

Dated the 12th January *192*6.

DIARY NO. 8588

19 — 19

Section. W-M-K

File No.

To

Rajakaryaprasaktha Dewan Bahadur
M.N.Krishna Rao Esq., B.A.,
Secretary to the Government of Mysore,
Financial Department.

Sir,

I have the honour to invite your kind reference to this office letter No.1480 SL. dated 23-11-1925 soliciting orders of Government re: the acceptance of certificates granted by Courts having jurisdiction outside the State and to request that the orders of Government may be kindly obtained early and communicated to me for further action.

I have the honor to be,
Sir,
Your most obedient servant,

E Ganapathy

For Comptroller.

U.

213

G.P. 40-25-45

Draft.

To

The Comptroller,
Mysore Government,
Bangalore.

H 4066/ dated 23.1.26.

Sir,

With reference to your letter No. 1480 /S.L. dated 28th November 1925 enquiring if the succession certificate granted by the Chief Judge of Bhavanagar in respect of the 7 per cent State Loan Bonds of the value of Rs 10,000 held by one Mr. Dadabhai Navroji Bhavanagarvala (since deceased) may be accepted, I am directed to state that it is not permissible according to law to act upon it. The party may be requested to produce a certificate granted by a competent Court in Mysore.

I have etc.,

16.1.26

Financial Secretary to Govt.